

THE
GENERAL STATUTES

OF THE
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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CHAPTER 63.

SUPREME COURT.

§ 4822. Number of judges.

The supreme court shall consist of one chief justice and four associate justices.

(1881, c. 141, § 1; G. S. 1878, v. 2, c. 63, § 1a.)

§ 4823. General powers.

The supreme court has power to issue writs of error, certiorari, mandamus, prohibition, quo warranto, and also all other writs and processes, not especially provided for by law, to all courts of inferior jurisdiction, to corporations and to individuals, that are necessary to the furtherance of justice and the execution of the laws; and shall be always open for the issuance and return of all such writs and processes, and for the hearing and determination of the same, and all matters therein involved, subject to such regulations and conditions as the court may prescribe. Any judge of said court may order the issuance of any such writ or process, and prescribe as to the service and return of the same.

(G. S. 1866, c. 63, § 1, as amended 1876, c. 58, § 1; G. S. 1878, c. 63, § 1.)

Except in such special proceedings as the statute has provided for, this court acquires jurisdiction only by writ of error or appeal. Parties cannot confer it by stipulation. *Rathbun v. Moody*, 4 Minn. 364, (Gil. 273.) See, also, *Ames v. Boland*, 1 Minn. 365, (Gil. 268.)

The writ of *certiorari* will issue to an inferior tribunal not acting according to the course of the common law, to bring to this court for review the record, the proceedings in the nature of a record, the rulings upon the admission or rejection of evidence, the instructions given and refused to the jury, the exceptions taken, and so much of the testimony as may be proper to show the bearing of such rulings and instructions and the prejudice to the petitioner. *Minnesota Central Ry. Co. v. M'Namara*, 13 Minn. 508, (Gil. 468.)

Certiorari does not lie before entry of judgment to review proceedings in the district court to enforce an assessment. *State v. Dist. Court of Ramsey Co.*, 44 Minn. 244, 46 N. W. Rep. 349.

The jurisdiction of the supreme court to issue writs of *mandamus* was not affected by c. 18, Laws 1862. *Crowell v. Lambert*, 10 Minn. 369, (Gil. 295.) The act of March 7, 1881, (Laws 1881, c. 40,) amending § 5986, takes from the supreme court original jurisdiction in *mandamus*, except in cases then pending, and cases where the writ is to be directed to a district court, or a judge thereof in his official capacity. *State v. Burr*, 28 Minn. 40, 8 N. W. Rep. 899.

A proceeding by information, in the nature of *quo warranto*, under this section, is not the action provided for in c. 79, *infra*. In the absence of legislation, or any controlling consideration to the contrary, such proceeding is governed as respects procedure by common-law rules. The *onus probandi* is therefore upon the respondent. It is for the attorney general to determine whether the public good requires him to institute and conduct such proceeding. If he deems it best to proceed, notwithstanding any conduct of the relator, at whose instance he moves, it would be a very extraordinary case, if any, in which his determination would be overruled. *State v. Sharp*, 27 Minn. 38, 6 N. W. Rep. 408. The supreme court has jurisdiction by *quo warranto* to enforce the forfeiture of the charter of a corporation. *State v. Railroad Co.*, 35 Minn. 232, 28 N. W. Rep. 245. As to *quo warranto* as a means of determining a contested election for city alderman, where a city charter provides that the city council shall be the judges of the qualification and election of its members, see *State v. Gates*, 35 Minn. 355, 28 N. W. Rep. 927.

Proceedings on information, in the nature of *quo warranto* are "remedial cases," and not "cases at law," in which trial by jury is demandable. *State v. Minnesota Thresher Manuf'g Co.*, 40 Minn. 213, 41 N. W. Rep. 1020.

The object of proceedings by *quo warranto* against a corporation. *Id.*

Proceedings by *quo warranto* lie directly against a de facto or pretended municipal corporation for usurpation of corporate franchises. Where the object is to test the right of the corporation to exercise such franchise, the information must be prosecuted by the attorney general in behalf of the state. *State v. Tracy*, 48 Minn. 497, 51 N. W. Rep. 613.

§ 4824. Power to enforce its judgments — Rules — Publication.

Said court is vested with full power and authority necessary for carrying into complete execution all its judgments, decrees and determinations, in the matters aforesaid, and for the exercise of its jurisdiction as the supreme judicial tribunal of the state; and shall, by order made at general or special term, from time to time make and prescribe such general rules and regulations for the conduct and hearing of causes in said court, not inconsistent with the statute law of the state, as it may deem proper; and the said court shall, by order, prescribe the manner of publication, at the expense of the state, of such rules and regulations; and the same shall not be in force until thirty days after the publication thereof.

(G. S. 1866, c. 63, § 2; G. S. 1878, c. 63, § 2.)

§ 4825. Decisions to be in writing—Entry of judgments.

The said court shall, in all cases decided by it, give its decision in writing, which shall be filed with the clerk of said court, with the other papers in the case. Decisions in cases heard at a general term may be filed in vacation, and judgment entered thereon in pursuance of the finding and order of the court, with the same effect as upon decisions made and filed in term.

(G. S. 1866, c. 63, § 3; G. S. 1878, c. 63, § 3.)

§ 4826. Syllabus of each decision to be filed and published.

Said court, at the time of announcing the decision, in every action pending in said court, shall file with the clerk thereof a syllabus of the decision in such action, so prepared as to embody, as briefly as practicable, the principles settled in and by such decision, and said clerk, immediately thereafter, shall make, and furnish to the publishers of each of the daily papers in the city of St. Paul who consent to publish the same without charge, a copy of each syllabus so filed, accompanied with the title of the action.

(G. S. 1866, c. 63, § 4; G. S. 1878, c. 63, § 4.)

§ 4827. Power of each judge in vacation.

Any one of the judges of the supreme court has power, in vacation, to issue any of the writs or processes which the said court is allowed by law to issue.

(G. S. 1866, c. 63, § 5; G. S. 1878, c. 63, § 5.)

§ 4828. General terms.

There shall be two general terms of the supreme court held at the seat of government of the state, one on the first Tuesday in April, and one on the first Tuesday in October.

(G. S. 1866, c. 63, § 6, as amended 1872, c. 43, § 1; G. S. 1878, c. 63, § 6.)

§ 4829. Absence of two judges—Adjournment.

If any two judges of said court shall not attend on the first or any other day of the term, the clerk shall enter such fact on record, and the judge present shall adjourn the court to the next day, and so on from day to day for six days, if neither of the absent judges appear; at the end of which period said court shall be adjourned, and all matters pending therein shall stand continued until the next regular or special term.

(G. S. 1866, c. 63, § 7; G. S. 1878, c. 63, § 7.)

§ 4830. Absence of all the judges—Adjournment.

If neither of the judges appear, the clerk of said court may adjourn from day to day, as provided in the preceding section.

(G. S. 1866, c. 63, § 8; G. S. 1878, c. 63, § 8.)

§ 4831. Special terms—Notice of holding.

Whenever, from any cause, it appears to the judges of said court, or any two of them, that the public interests require that a special term of the said court be held, the said judges, or any two of them, have authority to appoint a

MINNESOTA STATUTES 1894

Ch. 63]

SUPREME COURT.

§§ 4831-4832

special term, giving twenty days' previous notice thereof, by advertisement published in a newspaper at the seat of government of the state.

(G. S. 1866, c. 63, § 9; G. S. 1878, c. 63, § 9.)

§ 4832. Failure or continuance of term—Causes to stand over.

Whenever there is no general term of said court at the time fixed therefor by law, for any cause, or whenever there is a continuance of the term of said court, or a change in the time of holding any term by act of the legislature, all causes then upon the calendar of said court, all writs, recognizances, appeals and proceedings, commenced, taken, or made returnable to said court at said term, shall stand over to, and be heard at, the next general or special term, with like effect as if no such failure, continuance or change had occurred.

(G. S. 1866, c. 63, § 10; G. S. 1878, c. 63, § 10.)

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